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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILHELM AURES, AXEL KRETEN, and
FRIEDRICH STIPPEL

Appeal 2009-006841
Application 10/089,319
Technology Center 2600

Before, JOSEPH F. RUGGIERO, MAHSHID D. SAADAT, and
THOMAS S. HAHN, *Administrative Patent Judges*.

HAHN, Administrative Patent Judge.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellants invoke our review under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 2, 6-14, and 17. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants claim a communications system and method for controlling access to transmission resources by determining "instance of access", i.e., call, priority using call destination information.² Claim 1, which is exemplary, reads as follows:

1. A method for controlling instances of access to transmission resources of a communications network for transferring information items, comprising:

checking an event of an instance of access to the communications network to determine if the amount of transmission resources required for the information transfer is currently available in the communications network;

determining the priority of the instance of access upon ascertaining an amount of currently available transmission resources sufficient for the information transfer;

allocating the transmission resources required for the information transfer made in the communications network in the event of a high priority of the instance of access; and

determining at least one of the priority of the instance of access is using destination information items transferred in the course of the current instance of access, and of information items transferred in the course of the current instance of access and representing the type of information items to be transferred, and the priority of the allocated transmission resources by the type of information items transferred,

² See generally Spec. 8:10 – 9:12, 13:25 – 15:10; Figure.

wherein instances of access to the communications network for transferring information items with destination information items identifying an emergency call center have a high priority, the information items to be transferred to the emergency call center being assigned a high priority.

Appellants' Contentions

At pages 13-15 of the Appeal Brief, Appellants contend the Examiner erred in rejecting claims 1, 2, 6-14, and 17, under 35 U.S.C. § 103(a), as being unpatentable over the combination of Ertz (US 5,323,444) and Shionozaki (US 6,038,214). Appellants substantively argue that Ertz and Shionozaki alone or in combination fail to teach or suggest “a priority of an access to the communications network will be determined using destination information items transferred in the course of the current instance of access” (App. Br. 15). Appellants further assert that the Examiner erred in combining Ertz and Shionozaki (App. Br. 14-15).

Issue on Appeal

Did the Examiner err in rejecting claims 1, 2, 6-14, and 17 as being obvious over the combination of Ertz and Shionozaki?

ANALYSIS

We have reviewed the Examiner's rejection in light of the Appellants' arguments, and we disagree with Appellants' conclusion.

Appellants indicate that their arguments are collectively directed to the appealed independent claims 1 and 12, and that the appealed dependent claims are patentable for the same reasons (App. Br. 13). We, accordingly, select claim 1 as representative. *See* 37 C.F.R. § 41.37 (c)(1)(vii).

As an initial matter, the Examiner copied a portion of claim 1 and found “Ertz teaches . . . *determining at le[ast one of the priority of the instance of access is using destination information items transferred in the course of the current instance of access* (Fig. 10, Fig. 19(a), col. 10 lines 45-67) referenced by the incoming call processed through a check destination facility 630 wherein the ANI [automatic number identification] is used to determine a priority call from the Emergency Service Number table step 3 . . .” (Final Action 3 (copied claim recitation is italicized)). Appellants contest this finding, and argue “Ertz does not disclose determining a priority of a call at all. Ertz only discusses ‘priority’ in terms of prioritizing destinations to which a call may be routed” (App. Br. 14).

The Examiner continues in the disputed finding from Ertz, and further cites “background of Ertz (column 1)” where the Examiner finds the reference teaches:

[E]ach subscriber is assigned to a particular ESN [emergency service number] such that a 911 call received by a specific End Office (EO) on a particular subscriber line can be routed accordingly. In light of this background, it is clear that Ertz disclosure of emergency calls is from within the larger, more general PSTN [public switched telephone network], in which subscribers communicate via non-emergency calls. The cited disclosures from Ertz regarding initial destination lookup of ESN table for a 911 call meet the contested limitations, since these disclosed actions in Ertz require recognition of the call as an emergency call (as opposed to the non-emergency calls typically being placed between subscribers on the PSTN). Given the broad claim language, the rejections based upon these cited disclosures from Ertz are proper.

(Ans. 12-13). Appellants dispute these findings with assertions that Ertz does not disclose “determining a priority of a call” and that “the claimed invention is dealing with prioritization of ‘high-priority’ calls” (Reply Br. 2).

Based on our review of the record, we adopt the Examiner’s finding from Ertz column 1. Further, we agree with the Examiner that the claim language is “broad” (Ans. 13). Accordingly, we also agree with the Examiner that the claimed determining call priority using call destination information reads on Ertz.³ We find the Appellants’ argument directed against Ertz to be unavailing.

Alternatively, Appellants argue that Ertz teaches away from a combination with Shionozaki (App. Br. 14-15). According to Appellants Ertz only addresses emergency calls and Shionozaki teaches preempting resources for higher priority communications, and, therefore, a combination would result in Ertz dropping emergency calls (*id.*).

The Examiner and Appellants do not appear to dispute what Shionozaki teaches, but do dispute what is taught by Ertz. According to the Examiner, “Ertz’ disclosure . . . illustrates that emergency calls are placed amongst non-emergency calls in the PSTN” (Ans. 13). From our review of at least column 1 of Ertz, we agree with the Examiner and adopt this finding.⁴ With these findings concerning the references’ teachings, the

³ The referenced claim recitation reads “determining at least one of priority of the instance of access is using destination information items transferred in the course of the current instance of access.”

⁴ See Ertz, column 1, lines 26-29, “Prior 911 Equipment has generally been provided for large metropolitan areas which are served by a public switched

Examiner concludes that “combining the priority-based preemption teaching[] of Shionozaki with Ertz is proper in rejecting the claims” (*id.*). We find this reasoning to be premised on rational bases, and in the absence of any challenge from the Appellants in the Reply Brief, we agree with the Examiner’s combination of the references.

CONCLUSIONS

1. The Examiner did not err in rejecting claims 1, 2, 6-14, and 17, under 35 U.S.C. § 103(a), as being unpatentable over Ertz and Shionozaki.
2. Claims 1, 2, 6-14, and 17 are not patentable.

DECISION

The Examiner’s rejection of claims 1, 2, 6-14, and 17 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

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telephone network (PSTN) generally having more than one-hundred fifty thousand subscriber lines.”